HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.505 of 2005

V. K. Berry S/o late Sri P.C. Berry
The Organizers W. 138 Anupam Gardens
Country Club Road
Sainik Farms
New Delhi .....Applicant

Versus

1. Chief Judicial Magistrate, Dehradun
2. Sri Rajendra Agrawal
   S/o Sri Tek Chandra
   R/o 26 Park Road
   Laxman Chowk
   P.S. Kotwali Dehradun .....Respondents

Date:- 09th August, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Yogesh Pandey i/b for Sri Arvind Vashisth learned counsel for the applicant and learned A.G.A. for the State.

2. The petition under section 482 Cr.P.C. has been filed for quashing the entire proceedings of criminal case No.2599/2003 (Rajendra Agrawal Vs. V.K. Berry) under section 138 Negotiable Instrument Act.

3. The factual position in a nutshell is that the respondent No.2-Rajendra Agrawal filed a compliant in the Court of Chief Judicial Magistrate, Dehradun against the applicant under section 138 Negotiable Instrument Act alleging therein that the applicant was the official catrer of the Doon Institute of Technology, Dehradun and the complainant used to supply grocery items to him. The applicant issued two cheques and when the complainant submitted the cheque before the bank on 7.10.2003, but the cheques were dishonoured by the

bank due to insufficiency of funds. Thereafter, the complainant served two notices upon the applicant, but the same has been received back with the remark of 'not available' and 'refused to accept'. On the said complaint, the learned Magistrate took cognizance against the applicant vide order dated 22.12.2003. Feeling aggrieved by this, the applicant preferred the present petition.

4. The learned counsel for the applicant contended that the complaint does not contain the liability of the applicant and as such the complaint is not maintainable. I have perused the compliant. In para 2 of the complaint, it has been averred that the applicant issued two cheques in discharge of his liability towards the complainant. Therefore, at this stage there is sufficient ground to proceed against the accused.

5. The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this court. The High

Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

7. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the compliant are likely to be established or not.

8. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

9. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

(J. C. S. Rawat)

Dated 09.08.2005

LSR